DEPARTMENT OF STATE REVENUE

01-20120723.LOF

Letter of Findings: 01-20120723
Indiana Individual Income Tax
For the Tax Year 2010

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ISSUES

I. Indiana Individual Income Tax – Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Larson v. Commissioner of Revenue, 824 N.W.2d 329 (Minn. 2013).

Taxpayers protest the Department's proposed assessment for the 2010 tax year.

II. Tax Administration – Underpayment Penalty and Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2; IC § 6-3-4-4.1.

Taxpayers protest the imposition of the underpayment penalty and the negligence penalty.

STATEMENT OF FACTS

Taxpayers (also referred to as "Husband" and/or "Wife") are individuals with a current Florida address. Taxpayers own a house in Indiana. Taxpayers also possess tangible personal property, including automobiles, in Indiana, and their automobiles are properly titled and registered at the Indiana Bureau of Motor Vehicles ("Indiana BMV"). Additionally, Husband incorporated an Indiana company in 1999 and has been the president of the company since. The company was eventually acquired by a multinational company and became a subsidiary of that multinational company. Husband continues to work for the company as the president of that subsidiary located in Indiana.

In late 2008, Taxpayers purchased another house in Florida. Subsequently, Taxpayers applied for the Florida homestead exemption for the Florida house and obtained Florida drivers' licenses. Beginning in 2010, Taxpayers ceased filing their Indiana income tax returns. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana income tax return for tax year 2010, and that their 2010 Indiana income tax was due.

Taxpayers timely protested the assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessment for tax year 2010. Please refer to Letter of Findings 01-20120180 for Taxpayers' protest of the proposed assessment for tax year 2009. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax – Residency.

DISCUSSION

The Department determined that Taxpayers were Indiana residents, that they failed to file their 2010 Indiana income tax return, and that their Indiana income tax for 2010 is due. Taxpayers, to the contrary, claimed that they are not required to file their 2010 Indiana income tax return and they do not owe any Indiana income tax because they are not Indiana residents.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). The Internal Revenue Code requires taxpayers to report and pay their federal income tax when their gross income exceeds a certain amount. For state income tax purposes, the presumption is that the taxpayers properly and correctly file their federal income tax returns and, thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. Thus, IC § 6-3-1-3.5(a) provides the starting point for determining the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

IC § 6-3-2-2 further addresses issues of corporations and nonresidents; "adjusted gross income derived from sources within Indiana." Specifically, section (a) outlines what would be subject to Indiana income tax, which states:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within

Indiana", for the purposes of this article, shall mean and include:
(1) income from real or tangible personal property located in this state;
(2) income from doing business in this state;
(3) income from a trade or profession conducted in this state;
(4) compensation for labor or services rendered within this state; and
(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

"Resident" is defined in IC § 6-3-1-12, which provides:

The term "resident" includes (a) **any individual who was domiciled in this state during the taxable year**, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state. (**Emphasis added**).

IC § 6-3-1-13 states, "The term 'nonresident' means any person who is not a resident of Indiana."

45 IAC 3.1-1-21 further states:

An Indiana resident is:

(a) Any individual who was domiciled in Indiana during the taxable year, or
(b) Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state; or
(c) Any estate of a deceased person defined in (a) or (b) [subsections (a) or (b) of this section], or
(d) Any trust which has a situs within this state. (**Emphasis added**).

Additionally, 45 IAC 3.1-1-22 states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

(1) Purchasing or renting residential property
(2) Registering to vote
(3) Seeking elective office
(4) Filing a resident state income tax return or complying with the homestead laws of a state
(5) Receiving public assistance
(6) Titling and registering a motor vehicle
(7) Preparing a new last will and testament which includes the state of domicile.

The Indiana Supreme Court in Croop v. Walton, 157 N.E. 275 (Ind. 1927) addressed the issue of whether a taxpayer, Mr. Walton, had a domicile in Indiana and whether his intangible property was subject to certain Indiana taxes because Mr. Walton had moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." "**If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile**, **provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one**."

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of**

returning.

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile,"... "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person"... "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case....

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law.... **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely**. Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988). (Internal citations omitted) (**Emphasis added**).

In Larson v. Commissioner of Revenue, 824 N.W.2d 329 (Minn. 2013), the Minnesota Supreme Court addressed the issue of "whether [Mr. William] Larson changed his domicile to Nevada in 1998." Id. at 331. Mr. Larson, born, raised, and operated a business in Minnesota, arguing that he is not a Minnesota resident for 2002 through 2006, because he moved to Nevada in 1998. Id. at 330. Thus, Mr. Larson asserted that he was not responsible for Minnesota income tax assessed for 2002 through 2006. Id.

The Minnesota Supreme Court opined that "[o]nce domicile in Minnesota is established, that domicile is presumed to continue until 'the contrary is shown.'" Id. at 331. Ruling in favor of the Minnesota Commissioner of Revenue, the Minnesota Supreme Court, explained, in relevant part, that:

It is undisputed that Larson purchased a home in Nevada and moved personal possessions there in 1998. Since 1998, Larson also purchased several additional properties in Nevada; **homesteaded properties in Nevada; registered to vote in Nevada; received a valid driver's license in Nevada; and joined a club in Nevada. In the absence of an intent to remain in Nevada, however, Larson's physical relocation to Nevada does not change his domiciliary status**. (**Emphasis added**).

Id. at 331-32.

The Minnesota Supreme Court concluded that the tax court correctly found that Mr. Larson failed to establish his intent to remain in Nevada based on the records which showed that Mr. Larson had more connection with Minnesota as compared to his connection with Nevada. For example, Mr. Larson "registered more vehicles in Minnesota than Nevada, and maintained bank accounts and mail delivery in Minnesota" and Mr. "Larson also maintained other personal and professional connections in Minnesota that he did not have in Nevada." Id. at 332.

Similar to Mr. Larson who argued that he was not a Minnesota resident, Taxpayers in this case claimed that they were not required to file Indiana income tax for 2010 tax year and were not responsible for 2010 Indiana income tax because they became Florida residents in late 2008. To support their protest, Taxpayers provided copies of Taxpayers' Florida drivers' licenses as well as excerpts of their previous federal and state returns showing a Florida address. Taxpayers also submitted a letter, dated May 5, 2010, from the county Auditor's Office where Taxpayers' Indiana residence is located, acknowledging that Taxpayers wanted to file their homestead credit in Florida, as well as an e-mail correspondence regarding their May 5, 2010 request. Taxpayers further provided a copy of a letter, dated February 22, 2013, from the same Indiana county Auditor's Office, stating that the county Auditor's Office corrected and adjusted Taxpayers' "2009 pay 2010" and "2010 pay 2011" property tax bills, which resulted in additional property taxes on Taxpayers' Indiana property for both 2009 and 2010 tax years.

Taxpayers promptly paid the additional property tax the same day, February 22, 2013. Taxpayers thus maintained that they were not liable for the 2010 Indiana income tax because they did not receive the "homestead exemption" benefit on their Indiana property for 2010.

Upon reviewing Taxpayers' documentation, however, Taxpayers' reliance on their physical activities in Florida and the removal of the "homestead exemption" on their Indiana property is misplaced. Specifically, whether Taxpayers claimed the "homestead exemption" on their Indiana property is only one of several factors outlined in 45 IAC 3.1-1-22 when determining whether Taxpayers were domiciled in Indiana or Florida, as Taxpayers claimed, in 2010. Similar to Mr. Larson who purchased and homesteaded properties in Nevada, Taxpayers here purchased a house in Florida, properly insured, and applied for their "homestead exemption" benefit in Florida. However, the homestead exemption on Taxpayers' Indiana residence remained for the 2010 tax year. Not until February 2013, after the Department issued the proposed assessment against Taxpayers for the unpaid 2010 Indiana income tax, did Taxpayers make the additional payment of property tax to the Indiana county Auditor's Officer for the "2009 pay 2010" and "2010 pay 2011" tax years.

Similar to Mr. Larson who received a valid Nevada driver's license and joined in a club in Nevada, Taxpayers here obtained Florida drivers' licenses and joined a club in Florida. Like Mr. Larson, Taxpayers also retained more vehicles in Indiana than in Florida. Taxpayers stated that they registered two (2) vehicles in Florida in 2010 when the Department's records showed that, in 2010, the Indiana BMV issued a total of four (4) license plate numbers to Taxpayers–three (3) license plate numbers were issued to Husband and one (1) license plate number was issued to both Husband and Wife. In July 2010, Husband further purchased another vehicle from an Indiana dealership where Husband offered Taxpayers' Indiana residence, as the "Address of Purchaser," in the Indiana dealership's document at the time of his purchase.

Similar to Mr. Walton's business activities in Michigan and Mr. Larson's business activities in Minnesota, in this instance, Husband continued to work as the president of the same company located in Indiana for the tax year at issue. Husband claimed that, for 2010, he worked from his Florida residence. But, in the company's filings with the state of Indiana, Husband's residence remained at the same Indiana location. The nature of Husband's employment required Husband to maintain his contacts in Indiana, to carry an Indiana phone number, and to return to Indiana to perform certain necessary tasks. Thus, Husband still maintained his professional connection in Indiana.

Additionally, similar to Mr. Bayh who maintained family ties in Indiana, Mr. Walton who maintained family ties in Michigan, and Mr. Larson who maintained his personal connection in Minnesota, Taxpayers also maintained their personal connection in Indiana. Taxpayers here continue to own their Indiana home and various tangible personal property, including automobiles. As mentioned above, Taxpayers maintained and continued using their Indiana residence to receive mail delivery (including utility bills and property tax bills) and to conduct their banking or similar financial activities. For example, Husband used their Indiana residence as the address of purchaser to purchase a vehicle at an Indiana dealership in July 2010. Wife made a payment by personal check dated 2011, listing Taxpayers' Indiana residence as the address. That check payment further demonstrated that Taxpayers' Indiana bank account remained open and regularly utilized by Taxpayers in 2010. Taxpayers argued that, during 2010, they spent their time in Florida, but the records also revealed that Taxpayers were in Indiana. Thus, although Taxpayers claimed that they moved to Florida, they had not established their "intention to abandon the old domicile."

As discussed above, "resident" includes any individual who was domiciled in this state during the taxable year. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317-18.

There is no dispute that Taxpayers obtained Florida driver's licenses; joined a club in Florida, as well as purchased properties and applied "homestead exemption" benefit in Florida. However, Taxpayers continued maintaining their professional and personal connections in Indiana during 2010. Pursuant to the above mentioned statutes, regulations, and case law, Taxpayers' domicile is presumed to continue in Indiana. In the absence of the intent to remain in Florida, Taxpayers' physical relocation to Florida does not change their domiciliary status.

In short, given the totality of the circumstances, in the absence of other supporting documentation, Taxpayers were domiciled in Indiana during 2010 and thus were Indiana residents. Taxpayers remain obligated to file their 2010 Indiana income tax return and their 2010 Indiana income tax is due.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration – Underpayment Penalty and Negligence Penalty.

DISCUSSION

Taxpayers protested the imposition of the underpayment penalty and negligence penalty.

A. Underpayment Penalty.

The Department imposed an underpayment penalty because Taxpayers failed to timely remit their estimated payments of adjusted gross income tax under IC § 6-3-4-4.1(b).

IC § 6-3-4-4.1, in relevant part, states:

(a) Any individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code. However, the following apply to estimated tax returns filed and payments made under this subsection:

(1) In applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by IC 6-3-3.

...

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars ($1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by IC 6-8.1-10-2.1(b).

In this case, the Department takes no position as to whether the underpayment penalty should be calculated based on what Taxpayers reported on their original return or whether the penalty should ever be calculated based upon the amount for which Taxpayers are ultimately found liable. However, the Department's records showed that, previously, Taxpayers had substantial income and made some estimated payments; but, for tax year 2010, Taxpayers did not make any estimated payments. Additionally, Taxpayers did not provide documentation to demonstrate that their failure to pay tax was not due to negligence. Taxpayers continued to have a tax professional prepare and file their income tax returns. The tax professional is the agent for Taxpayers; Taxpayers, as the principal, are responsible for the result.

Given the totality of the circumstances, in the absence of other supporting documentation, an underpayment penalty is properly imposed IC § 6-3-4-4.1(b) because Taxpayers failed to make any estimated payments as statutorily required for tax year 2010.

B. Negligence Penalty.

Taxpayers also protested the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

(4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

45 IAC 15-11-2(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), in part, as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;

(2) judicial precedents set by Indiana courts;

(3) judicial precedents established in jurisdictions outside Indiana;

(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty

assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers did not provide sufficient documentation to demonstrate that their failure to pay tax was not due to negligence.

FINDING

Taxpayers' protest of the underpayment penalty and negligence penalty is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment for the 2010 tax year is denied. Taxpayers' protest of the underpayment penalty and negligence penalty is also respectfully denied.

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